

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Greenwood, Inc.,)	
)	
Plaintiff,)	
)	
v.)	<u>COMPLAINT</u>
)	(Jury Trial Demanded)
)	
IES Commercial, Inc., a subsidiary)	
IES Holdings, Inc.,)	
)	
Defendant.)	
)	

Plaintiff Greenwood, Inc., complaining of the above-named Defendant, would allege and show unto this honorable Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Greenwood, Inc. (hereinafter “Greenwood” or “Plaintiff”) is a corporation lawfully organized and existing pursuant to the laws of the State of South Carolina and having its principal place of business in Greenville County, South Carolina.

2. Defendant IES Commercial, Inc., a subsidiary of IES Holdings, Inc. (hereinafter “IES” or Defendant), is a Delaware corporation maintaining its principal place of business in a state other than South Carolina.

3. IES is subject to the personal jurisdiction of this Court in that it: (1) is licensed to transact business in South Carolina; (2) maintains a registered agent for service of process with the South Carolina Secretary of State; (3) owns, occupies and/or operates a facility in South Carolina; and (4) regularly transacts business in South Carolina.

4. This court has jurisdiction over the subject matter of this lawsuit pursuant to 28 U.S.C. § 1332, as there exists complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

FACTS OF THE CASE

5. On or about October 27, 2016, Greenwood and IES entered into an Independent Subcontractor Agreement (“the Contract”). Pursuant to the Contract, Greenwood agreed to provide labor and materials for the completion of the Scope of Work identified and defined therein for a project known as the VAMC Boiler Upgrade Project (“the Project”) in consideration for payment by IES in the amount of One Million Three Hundred Twenty-Eight Thousand Eight Hundred Ninety-Three and 50/100 Dollars (\$1,328,893.50) (“Base Contract Price”).

6. Greenwood has completed the Scope of Work, has performed its contractual warranty obligations, and has, in all other manners, fulfilled its obligations under the Contract.

7. IES refuses to acknowledge Greenwood’s completion of the Scope of Work and has engaged in an ongoing pattern and practice of attempting to coerce Greenwood into providing labor and materials for work that is beyond the Scope of Work for which Greenwood contracted, which continues to this day.

8. Such pattern and practice consists of conduct including, but not limited to:

- a. withholding payment of the unpaid portion of the Base Contract Price in an amount not less than \$330,428.71;
- b. failing and refusing to submit upstream Greenwood’s application for payment of significant additional expenses incurred by Greenwood as the result of delays caused by and demands imposed by IES, in an amount not less than \$419,000.00 (“the Supplemental Conditions Payment”);

- c. demanding that Greenwood provide labor and materials for the performance of work for which it has not contracted, without payment for the same;
- d. refusing, without justification, to acknowledge completion of the Scope of Work;
- e. demanding that Greenwood provide warranty services, without compensation, that are beyond the scope of warranty services to which Greenwood obligated itself by operation of the Contract;
- f. by wrongfully, and without justification, refusing to consent to the closure of Greenwood's performance bond in connection with the Project;
- g. by intentionally excluding Greenwood from all reasonable opportunity to participate in communications amongst IES and upstream contractors and the owner of the Project;
- h. by making misrepresentations to Greenwood concerning the content of those communications as between IES and the upstream contractors and the owner of the Project, in furtherance of IES efforts to mislead and coerce Greenwood into performing work for the benefit of IES without compensation;
- i. by continually and persistently making fraudulent assertions of amounts owed by Greenwood to IES and threats of action to recover the same;
- j. by refusing to engage in the alternative dispute resolution provisions of the Contract; and

- k. in such other manners as may be identified in discovery and/or shown at trial.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

9. Greenwood incorporates the foregoing allegations of the Complaint as if fully restated verbatim herein.

10. There exists a Contract between Greenwood and IES.

11. Greenwood fulfilled all of its obligations under the Contract by, *inter alia*, performing the Scope of Work.

12. IES, despite due notice and demand, has failed and refused to remit payment due to Greenwood, thereby breaching the Contract.

13. Greenwood has suffered damages as the result of IES's breach and is entitled to recovery from IES of those damages, including, the unpaid Base Contract Price in the amount of not less than \$330,428.71, the Supplemental Conditions Payment in the amount of not less than \$419,000.00, plus interest, such incidental, consequential and additional damages as may be shown at trial, and attorneys' fees and legal costs.

FOR A SECOND CAUSE OF ACTION
(*Quantum Meruit*)

14. Greenwood incorporates the foregoing allegations of the Complaint as if fully restated verbatim herein.

15. Greenwood has provided valuable labor and materials to the Project at the requests of and for the benefit of IES.

16. Greenwood provided such labor and materials with the expectation of payment by IES.

17. At all times, the circumstances attendant to Greenwood's provision of such labor and materials have been sufficient to place IES on notice of Greenwood's expectation of payment for the labor and materials by IES.

18. Greenwood has demanded payment for the labor and materials by IES, and IES has refused the same.

19. IES has been unjustly enriched by the provision of labor and materials for which it has not paid.

20. Greenwood has incurred the costs associated with the provision of the labor and materials and has been deprived of the fair and equitable value of the same as a consequence of IES's conduct.

21. Greenwood is entitled to payment from IES of the full and fair value of the labor and materials in an amount not less than \$749,428.71.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

22. Greenwood incorporates the foregoing allegations of the Complaint as if fully restated verbatim herein.

23. Greenwood has an enforceable contractual relationship with IES.

24. IES has breached the Contract as set forth above.

25. IES has and continues to possess fraudulent intent and to commit fraudulent acts in furtherance of its breach of the Contract in one or more particulars, at least by:

- a. Knowingly making false representations to Greenwood for the purpose of inducing Greenwood to provide labor and materials to the Project outside of the scope of Greenwood's contractual obligations;
- b. Knowingly making false representations to Greenwood concerning matters

including, but not limited to communications between IES and upstream contractors and the Project owner concerning the status of submittal and processing of applications for payment submitted by Greenwood;

- c. Knowingly and intentionally excluding Greenwood from participation in communications amongst Project stakeholders in order to conceal the true content of those communications from Greenwood for the purpose of perpetuating the misrepresentations made by IES to Greenwood;
- d. Misrepresenting the status of the Project and Greenwood's work thereupon to upstream contractor's and the Project owner in order to shift blame from IES to Greenwood for IES's own misfeasance and/or malfeasance;
- e. Otherwise making misrepresentations or fact and/or actively concealing the truth in order to unjustifiably withhold payment from Greenwood and/or to coerce Greenwood into providing valuable services to the benefit of IES and which Greenwood has no legal obligation to perform; and
- f. As may otherwise be identified through discovery and/or as may be shown at trial.

26. Greenwood has suffered damages as the result of IES's conduct and is entitled to recovery from IES of those damages, including, the unpaid Base Contract Price in the amount of not less than \$330,428.71, the Supplemental Conditions Payment in the amount of not less than \$419,000.00, plus interest, such incidental, consequential and additional damages as may be shown trial, and attorneys' fees and legal costs. Greenwood is further entitled to an award of punitive damages against IES.

FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practices)

27. Greenwood incorporates the foregoing allegations of the Complaint as if fully restated verbatim herein.

28. IES has and continues to engage in unfair and deceptive acts prohibited by the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq. ("the Act").

29. IES engages in "trade and commerce" as defined by the Act.

30. IES has engaged and continues to engage in unfair and deceptive acts by the conduct previously described above and incorporated herein.

31. The unlawful actions taken by IES are offensive to public policy and are immoral, unethical and oppressive to Greenwood and the public.

32. The unlawful actions taken by IES have the capacity, effect, or tendency to deceive.

33. The unlawful actions taken by IES adversely affect the public interest and are capable of repetition.

34. IES continues to conduct business in South Carolina, and will continue to repeat the conduct described herein.

35. IES has engaged in the unfair and deceptive actions complained of herein willfully and knowingly in violation of the Act.

36. By taking these actions, IES intends to deprive Greenwood of payments that is duly owed and to coerce Greenwood to perform services that Greenwood has no legal obligation to perform, without compensation.

37. As a direct and proximate result of IES's ongoing violations of the Act, Greenwood has been and continues to be damaged and is entitled to recover actual damages,

together with interest and legal costs, attorney's fees, treble damages, and all other damages allowed by the Act.

FOR A FIFTH CAUSE OF ACTION
(Conversion)

38. Greenwood incorporates the foregoing allegations of the Complaint as if fully restated verbatim herein.

39. Upon information and belief, IES has received payment from the Project owner or other upstream contractors in the amount of the unpaid Base Contract Price and/or such other amounts that are owed to Greenwood (“the Funds”).

40. IES has retained the Funds for its own use and benefit, despite Greenwood’s lawful entitlement to receipt of the same.

41. IES has no lawful justification for withholding the Funds from Greenwood.

42. IES has refused to deliver the Funds to Greenwood and has converted the Funds to IES’s own use.

43. Accordingly, Greenwood is entitled to actual damages in the amount of the Funds, plus interest, and punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment)

44. Greenwood incorporates the foregoing allegations of the Complaint as if fully restated verbatim herein.

45. This action is brought pursuant to S.C. Code Ann. § 15-53-10, *et seq.* (1962, as amended), seeking a declaration that (1) Greenwood has fulfilled its obligations to IES under the Contract; and (2) Greenwood has no further obligations or duties to IES under the Contract or in connection with the Project.

46. For the reasons outlined hereinabove, a justiciable controversy exists between Greenwood and IES arising out of the Contract and the Project. Therefore, Greenwood asks this Court to construe and determine the rights of the parties and to declare that: (1) Greenwood has fulfilled all of its obligations to IES under the Contract; and (2) Greenwood has no further obligations or duties to IES under the Contract or in connection with the Project.

WHEREFORE, Plaintiff, Greenwood, Inc., prays that this Court:

1. Render judgment in its favor against IES as to each of the Causes of Action alleged above;
2. Award it actual, consequential and punitive damages against IES;
3. Issue the declarations prayed for in connection with Greenwood's Sixth Cause of Action;
4. Award Greenwood the attorneys' fees and costs incurred in the prosecution of this action against IES;
5. Award Greenwood pre-judgment interest; and
6. For such other and further relief as the Court deems just and proper.

Dated this the 13th day of July, 2021.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: /s/ W. Kyle Dillard
W. Kyle Dillard (Fed I.D. #7941)
300 N Main Street (29601) PO Box 2757
Greenville, South Carolina 29602
Telephone: (864) 271-1300
Facsimile: (864) 235-8806
kyle.dillard@ogletreedeakins.com

Attorneys for Plaintiff, Greenwood, Inc.

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